IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Lumbharam Jat Vs. Labour Court, Jodhpur & Ors.

S.B.CIVIL WRIT PETITION NO.5956/2006

DATE OF ORDER :: March 02, 2007

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.Girish Joshi, for the petitioner.

BY THE COURT:

By the instant writ petition under Article 226 of the Constitution of India the petitioner has impugned the award Annexure-6 dt. 2.6.2001 passed by respondent No.1, Labour Court Jodhpur (for short `the Labour Court' hereinafter).

I have heard learned counsel for the petitioner at length. Perused the award impugned as also the record of the Labour Court, which was requisitioned vide order dt. 10.4.2006.

On failure of conciliation proceedings, the State

Government made a reference to the Labour Court vide order dt. 14th October, 1997 as to whether the retrenchment/termination of the petitioner-workman from service w.e.f. 30.9.1995 was valid or not. On receipt of the reference, a notice was served to the petitioner. The petitioner filed a claim. Notices were served to the employer respondent No.2. The employer came with a case that the petitioner was not regularly engaged as a labourer but he was only engaged for few days as and when the occasion arose and he has not completed 240 days in any one calendar year. It has also been stated that the petitioner is 61 years of age and he, at his own, left the job for which he was temporarily engaged on daily wages basis as being an old person.

Before the Labour Court, a detail of work undertaken by the petitioner-workman was filed. The Labour Court calculated the period of days which the petitioner-workman worked on daily wages basis; in the year 1989-1990, he worked 26 days; 1990-1991, 179 days; 1991-1992, 79 days; 1992-1993, 104 days; 1993-1994, 119 days and; in 1994-1995 101 days and, therefore, on appreciation of the evidence, the Labour Court came to the conclusion that the petitioner-workman failed to establish that he worked continuously for a period of 240 days in any one calendar year as also held that it was the petitioner-workman, who is 61 years of age, voluntarily left the job and

discontinued to do the work on daily wages basis and, therefore, answered the reference against the petitioner-workman and in favour of the respondents.

From the perusal of the record and the evidence produced by the parties, in my view, the conclusion arrived at by the Labour Court cannot be said to be erroneous. The finding of fact arrived at by the Labour Court is based on sound and proper appreciation of evidence produced before it. It is settled law that the burden of proving is on the workman that the workman worked for 240 days in one calendar year and he has been retrenched/terminated from service in violation of the provisions of Industrial Disputes Act, which in my view, the petitioner workman failed to establish. In the circumstances, therefore, I do not find any good ground to interfere in the award impugned.

In the result, the writ petition has no force and the same is hereby dismissed. There shall be no order as costs.

[H.R.PANWAR],J.

m.asif/-